



**dated**

**2018**

**APPENDIX 2**

**(1) [ ]**

and

**(2) [ ]**

and

**(3) [ ]**

and

**(4) [ ]**

**Members' Agreement for [Capital Letters] Limited**

**trowers & hamlins**

## Contents

<b>1</b>	<b>Definitions and Interpretation</b>	<b>2</b>
<b>2</b>	<b>Consideration</b>	<b>5</b>
<b>3</b>	<b>Delegated Authority</b>	<b>5</b>
<b>4</b>	<b>Business Of The Company</b>	<b>5</b>
<b>5</b>	<b>Completion</b>	<b>6</b>
<b>6</b>	<b>Conduct Of The Company's Affairs</b>	<b>6</b>
<b>7</b>	<b>Member Rights</b>	<b>8</b>
<b>8</b>	<b>Funding</b>	<b>8</b>
<b>9</b>	<b>Annual Business Plan</b>	<b>8</b>
<b>10</b>	<b>Organisation of the Board</b>	<b>9</b>
<b>11</b>	<b>Meetings</b>	<b>10</b>
<b>12</b>	<b>Reserved Matters</b>	<b>11</b>
<b>13</b>	<b>Deadlock</b>	<b>12</b>
<b>16</b>	<b>Termination Of This Deed</b>	<b>15</b>
<b>17</b>	<b>Confidentiality</b>	<b>15</b>
<b>18</b>	<b>Freedom Of Information</b>	<b>15</b>
<b>19</b>	<b>No Partnership or Agency</b>	<b>16</b>
<b>20</b>	<b>Waiver</b>	<b>16</b>
<b>21</b>	<b>Variation</b>	<b>17</b>
<b>22</b>	<b>Conflict with Articles</b>	<b>17</b>
<b>23</b>	<b>Notices</b>	<b>17</b>
<b>24</b>	<b>Costs</b>	<b>17</b>
<b>25</b>	<b>Severability</b>	<b>17</b>
<b>26</b>	<b>Exercise of powers</b>	<b>18</b>
<b>27</b>	<b>Entire Agreement</b>	<b>18</b>
<b>28</b>	<b>Assignment</b>	<b>18</b>
<b>29</b>	<b>Contract (Rights of Third Parties) Act</b>	<b>18</b>
<b>30</b>	<b>Law and Jurisdiction</b>	<b>18</b>
	<b>Schedule 1 - Reserved Matters</b>	<b>19</b>
	<b>Schedule 2 - Deed of Adherence</b>	<b>21</b>

# Members' Agreement

dated 2018

## Parties

- (1) [ ] of (1) [ ] (**Member 1**);  
(2) [ ] of (1) [ ] (**Member 2**);  
(3) [ ] of (1) [ ] (**Member 3**);  
(4) [ ] of (1) [ ] (**Member 4**);

and

- (5) **[Capital Letters] Limited** (registered number [ ] whose registered office is at [ ] (**the Company**))

## Introduction

- (A) The Company was incorporated in England and Wales as a private company limited by guarantee on [ ] under the Companies Act 2006.
- (B) The Company is a *Teckal* company fulfilling the conditions set out in Regulation 12(4) of the Public Contracts Regulations 2015. The Company is subject to management supervision by the Members in the terms set out in this Deed. As such, the Company is a body governed by public law as defined in the Public Contracts Regulations 2015.
- (C) The Members have established the Company as a vehicle through which services are delivered to the "A" Members; and to any other customers (including "B" Members) as considered appropriate by the Members from time to time provided that any services to non-Members shall always remain incidental to the primary aim of providing services to the Members and shall not exceed the threshold as set out in Regulation 12 of the Public Contract Regulations at all times.
- (D) The Members are local authorities exercising their powers under section 1 Localism Act 2011 when establishing the Company.
- (E) The Members wish to participate as Members in the Company and have agreed to enter into this Deed for the purpose of regulating their relationship with each other and the Company as provided herein.
- (F) The Company has agreed with the Members that it will comply with the terms and conditions of this Deed insofar as they relate to the Company.
- (G) Critical management decisions are reserved to the Members and these are set out in Schedule 1 to this Deed.

## Agreed terms

### 1 Definitions and Interpretation

In this Deed:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

**Act** means the Companies Act 2006;

**Annual Business Plan** means a business plan in a form to be approved by the Members setting out the implementation, over a particular Financial Year, of the strategic objectives of the Company in relation to the Business as described in the Service Plans, to include budgets, expenses (including any administrative expenses) and projected financial results for such Financial Year;

**Application for Membership and Deed of Adherence** means an application for membership of the Company and deed of adherence to this Deed in the form set out at Schedule 2;

**Articles** means the articles of association of the Company as adopted (as may be amended from time to time);

**Board** means the Directors of the Company, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles;

**Business** means the business of the Company (including any Subsidiaries) as described in clause 4 and/or such other business as the Members may unanimously agree from time to time in writing should be carried on by the Company;

**Business Day** means any day (other than a Saturday or Sunday) or a bank or public holiday in England and Wales;

**Completion** means the performance by the parties of their respective obligations under clause 5;

**Confidential Information** means any financial or other information in respect of the Company or the Business or the Members (in the case of the Company) or any other Member (in the case of a Member) or any matter subject to or in connection with this Deed;

**Deed of Adherence** means a deed of adherence to this Deed in the form set out at Schedule 2 or such other form as the Members may prescribe;

**"A" Director** means a Director appointed by an "A" Member in accordance with article 21.1.2 from time to time;

**"B" Director** means a Director nominated by a "B" Member in accordance with article 21.1.3 and appointed in accordance with article 21.1.4 from time to time;

**"C" Director** means a Director appointed in accordance with article 21.1.5 from time to time;

**Director** means any duly appointed director of the Company from time to time;

**Encumbrance** means any mortgage, charge, pledge, lien, assignment by way of security, option, refusal, other preferential arrangement, third party right or interest, security interest of any kind or other arrangement having similar effect;

**Financial Year** means the year commencing 1 April and expiring on the subsequent 31 March;

**FOIA** means the Freedom of Information Act 2000;

**Information** has the meaning given under section 84 of the FOIA;

**Lease Assignment Documents** means the assignment documents assigning leases held by a Member to the Company.

**London Councils** means the cross-party organisation that represents that represents London's 32 local authorities;

**"A" Members** means the Members of the Company designated as "A" Members in accordance with the Articles from time to time;

**"B" Members** means the Members of the Company designated as "B" Members in accordance with the Articles from time to time;

**Member(s)** means the "A" Members and the "B" Members and any other body or person admitted to Membership by consent of the Members and designated as an "A" Member or a "B" Member from time to time in accordance with the Articles and this Deed;

**Members' Representative Board** means a board comprising the Voting Representatives as described in clause 3;

**Nominated Director** means a Director appointed pursuant to Clause **Error! Reference source not found.** of this Agreement;

**Normal Trade Credit** means the credit which arises when a supplier of goods and/or services allows the Company to pay for those goods and/or services at a date which is later than the date upon which they are supplied to the Company;

**Operational Date** means the date upon which the Company commences the provision of the Services;

**Ordinary Resolution** has the meaning given to it by section 282 of the Act;

**Project Documents** means the documents agreed between the Members relating to the operation and funding of the Company including (as applicable) the Service Level Agreement, [the Secondment Agreement] [and the Lease Assignment Documents];

**Public Body** means a body governed by public law as defined in the Public Contracts Regulations and **Public Bodies** and **Non-Public Bodies** shall be construed accordingly

**Public Contracts Regulations** means Public Contracts Regulations 2015 and any statutory modification or re-enactment thereof for the time being in force;

**Request for Information** shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations 2004;

**Reserved Matter** means any of the individual management decisions reserved to the Members and requiring the percentage approval listed in Schedule 1;

**[Secondment Agreement** means the agreement between the Member and the Company for the secondment of employees from the Member to the Company]

**Services** means the services that make up the Business of the Company to be delivered by the Company under any Service Level Agreement;

**Service Level Agreement** means a service level agreement made between any Member and the Company for the delivery of Services;

**[Service Plan** means the plan agreed on a rolling three year basis between the Company and each Member detailing the Services]; and

**Subsidiary** has the meaning given to it by section 1159 of the Act.

- 1.2 references to any statute or statutory provisions will, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in such statute or provisions, and to any subsequent statute or the corresponding provisions of any subsequent statute in force at any time prior to the date of this Deed directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provisions which are in force prior to the date of this Deed;
- 1.3 references to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships;
- 1.4 references to clauses, Schedules and Annexures are to clauses of and the Schedules and Annexures to this Deed;
- 1.5 the Schedules form part of this Deed and will have the same force and effect as if expressly set out in the body of this Deed;
- 1.6 the headings to the clauses of this Deed and to the paragraphs of the Schedules will not affect its construction;
- 1.7 any phrase in this Deed introduced by the term **include, including, in particular** or any similar expressions which will be construed as illustrative and will not limit the sense of the words preceding that term.

## 2 **Consideration**

In consideration of the mutual agreements and undertakings set out in this Deed the parties have granted the rights and accepted the obligations in this Deed.

### 3 **Delegated Authority**

- 3.1 Each Member shall nominate one individual (**Voting Representative** as defined in the Articles) to represent that Member at general meetings of the Members, to cast the membership vote and to sign any resolution in writing on behalf of that Member (acting at all times within the bounds of the delegated authority and in accordance with the instructions of the appointing Member in respect of any such resolution).
- 3.2 Delegated authority shall be in writing in agreed form and served upon the Company.
- 3.3 A Member may change its Voting Representative from time to time provided that any change shall not take effect until notice has been duly served in writing on the Company.
- 3.4 The other Members, the Directors and the Company shall have the right to rely on any action taken by a notified Voting Representative acting within his delegated authority.
- 3.5 The following persons shall be the initial Voting Representatives for each Member on and from Completion:
- 3.5.1 [Member 1]: [ ];
- 3.5.2 [Member 2]: [ ];
- 3.5.3 [Member 3]: [ ]; and
- 3.5.4 [Member 4]: [ ].

### 4 **Business Of The Company**

- 4.1 The Business of the Company is:
- 4.1.1 to procure accommodation for homeless households and those at risk of homelessness by providing services in connection therewith to:
- (a) the "A" Members; and
- (b) to any other customers (including "B" Members) as considered appropriate by the Members from time to time provided that any services to non-Members shall always remain incidental to the primary aim of providing services to the Members and do not account for more than 20% of the turnover of the Company in any financial year (or such other percentage of turnover as may be permitted by law from time to time) at all times as set out in Regulation 12 of the Public Contract Regulations;
- 4.1.2 to undertake the management of accommodation for homeless households and those at risk of homelessness; and
- 4.1.3 to provide such other services and undertake such other functions as are agreed by the Members from time to time.

5 **Completion**

5.1 Completion shall take place immediately after the execution of this Deed when the parties shall take, or procure to be taken at Board and Members' meetings of the Company the following steps, to the extent not already taken:

5.1.1 the appointment or designation of the following persons as Directors as appropriate:

Name	Appointment or designation
[	]
[	]
[	]
[	]

5.1.2 the adoption of the agreed form articles of association as the Company's Articles.

5.2 Not later than the Operational Date the relevant Members and the Company shall enter into such of the Project Documents as each relevant Member considers necessary.

6 **Conduct Of The Company's Affairs**

6.1 Each Member covenants with the other Members that so long as this Deed remains in force and effect it will so far as it is reasonable for it to do so:

6.1.1 be just and true to the other Members and act in good faith;

6.1.2 as soon as practicable notify the Company of any matters of which it becomes aware which may affect the Company or the Business;

6.1.3 generally do all things necessary to give effect to the terms of this Deed;

6.1.4 take all steps available to it to ensure that it is represented at meetings of the Board or any committee of the Board or general meetings has the necessary quorum throughout;

6.1.5 consider the Company as a potential supplier for all activities that form part of the Business;

6.1.6 for each "A" Member, provide the Company [by no later than [30] days following the end of each financial year] with a report in writing on the percentage of that "A" Member's total procurement of dwellings to support the discharge of their statutory responsibilities for homeless households (or those at risk of homelessness) that has been undertaken for it via the Company in that preceding financial year; and



- 6.1.7 keep the Company fully informed of its activities that are relevant to the Business and of any plans it may have to enter into a material contract with a third party for services that are similar to the Services or any of part of them.
- 6.2 Subject to clause 12 the Board shall be responsible for the day to day management of the Company in accordance with the Annual Business Plan and without prejudice to the generality of the foregoing shall:
- 6.2.1 transact all its business on arm's length terms;
- 6.2.2 maintain, with a well-established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or a similar business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;
- 6.2.3 keep proper books of account and therein make true and complete entries of all its dealings and transactions of and in relation to the Business;
- 6.2.4 prepare its accounts in accordance with the Act and in accordance with all applicable accounting standards and principles and practices generally acceptable in the United Kingdom;
- 6.2.5 prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited (where required) as soon as practicable and in any event not later than four months after the end of the relevant accounting reference period; and
- 6.2.6 within 6 weeks after the end of each quarter (the first quarter starting on the date of this Deed), prepare quarterly management accounts (including once the first six months have elapsed budget forecasts by comparison to their respective business plans).
- 6.3 Any surpluses generated from providing Services to both Members and any third parties shall be applied solely in promoting the Company's objects.
- 6.4 Nothing in this Deed shall prevent the Company from providing services to non-members, provided that:
- 6.4.1 this does not impact on the Company's ability to provide the Services to any Member; and
- 6.4.2 the services to non-members do not account for more than 20% of the turnover of the Company in any financial year (or such other percentage of turnover as may be permitted by law from time to time) so as to ensure the Company remains classified as a jointly controlled Teckal company pursuant to Regulation 12 of the Public Contract Regulations 2015.
- 6.5 In the event that the Company is dissolved any capital and assets available for distribution shall be divided between the Members and any former Member(s) in accordance with the provisions of the Articles.

6.6 The Company shall permit any Director to discuss the affairs, finances and accounts of the Company with any members, officers and executives at any time. All books, records, accounts and documents relating to the business and the affairs of the Company shall be open to the inspection of any such person, who shall be entitled to make any copies thereof as he or she deems appropriate to keep the relevant Member properly informed about the business and affairs of the Company or to protect its interests as a Member. Any confidential information secured as a consequence of such discussions and examinations shall be kept confidential by the requesting Member and its designated officers and executives in accordance with the terms of clause 17.

## 7 **Member Rights**

7.1 Each Member shall have the right to cast one vote on any Member resolution (at a general meeting or in writing).

7.2 The Service Level Agreement will set out the different provisions applicable to A Members and B Members. This will include the ability for only the A Members to receive the benefit of subsidy from the Company to contribute towards the payment of landlord incentives or to top up lease rents.

## 8 **Funding**

8.1 The Company will be funded through a combination of payment from tenants in respect of delivery of Services, payment from Members contracting with the Company for delivery of Services, payment from Government through grant payment.

8.2 [Individual costs associated with delivery of Services in accordance with any contractual arrangements with the Members will be borne by the relevant Members.

8.3 Any additional operating costs (including applicable profit margin) will be attributed to the relevant Member where possible. Any such costs which cannot be directly allocated to a relevant Member will be apportioned according to the economic/service benefit derived by the relevant Members.

8.4 Any operational savings will be attributed to the relevant Member where possible. Any savings which cannot be directly allocated to a relevant Member will be apportioned according to the economic/service benefit derived by the relevant Members except for an amount which will be retained by the company for future development or asset replacement as agreed by the Board.

8.5 For the avoidance of doubt, the reference to costs in clauses 8.2 to 8.4 includes any applicable profit margin of the Company from time to time and the parties confirm that the charging arrangements are not intended to amount to an exact reimbursement of costs overall.]

8.6 Without prejudice to the provisions of clauses 8.1 to 8.5 above, the Company and the Business shall be financed by such sources as specified in the Annual Business Plan.

8.7 In the event that the Company requires additional finance from time to time, no Member shall be required to provide any such funding or to guarantee or provide any security or accept any other liability with respect to any borrowings by, or loan facilities made

available to, the Company. Any requests for additional funding shall be considered in good faith by the Board and the Members on a case by case basis.

## 9 **Annual Business Plan**

9.1 The first Annual Business Plan shall be agreed between the "A" Members and the Company not later than the Operational Date.

9.2 For each subsequent Financial Year:

9.2.1 the Company will (not less than 90 days prior to the beginning of such Financial Year) provide each "A" Member with a draft Service Plan for consideration and the Company will (not less than 30 days prior to the beginning of such Financial Year) agree a Service Plan with each "A" Member; and

9.2.2 the Board will (not less than 60 days prior to the beginning of such Financial Year) cause to be prepared a draft Annual Business Plan for such Financial Year for Board approval.

9.3 Where approval is required from the "A" Members in accordance with clause 9.2, the "A" Members will, not later than 30 days before the beginning of each Financial Year, consider and seek to unanimously reaffirm the draft Annual Business Plan. If the "A" Members cannot agree the draft Annual Business Plan then, notwithstanding that this matter is a Deadlock for the purposes of clause 13, the last approved version of the Annual Business Plan shall remain in full force and effect until such time that a plan is agreed by no less than 76% of the "A" Members or the matter is resolved pursuant to the provisions of clause 13 and the last approved version of the Annual Business Plan shall continue to apply to the Business and the Company for the next Financial Year.

9.4 The "A" Members may consult with the "B" Members and London Councils (in any way that may be determined by the "A" Members from time to time) on the content of the Annual Business Plan to seek their views and comments. For the avoidance of doubt "B" Members and London Councils do not have the ability to approve or reject any aspect of the Annual Business Plan and their role shall be advisory only.

## 10 **Organisation of the Board**

10.1 If any "A" Member ceases to be a Member then that "A" Member shall be deemed to have served notice to remove from office any "A" Director appointed by it and shall not be entitled to appoint any "A" Director in their place.

10.2 If any "B" Member ceases to be a Member then that "B" Member shall be deemed to have served notice to remove from office any "B" Director appointed by the "A" Members following nomination by the "B" Member and shall not be entitled to nominate a "B" Director in their place.

10.3 Upon such removal or resignation from the office of Director or termination of employment the said Member will use its best endeavours to procure that any such Director shall deliver to the Company a letter signed as a deed and/or the required statutory form of compromise agreement (at the Company's option) acknowledging that he or she has no claim outstanding for compensation for wrongful dismissal or unfair dismissal or entitlement to any payment for redundancy or in respect of any other moneys or benefits

due to him or her from the Company arising out of his or her employment and/or its termination. In any event, the said Member shall be responsible for and shall indemnify the other Members and the Company against any claim (save for unpaid salary and benefits) by such Director for unfair or wrongful dismissal or any other claim whatsoever arising out of such Director's removal from office as a Director and/or the termination of his or her employment.

10.4 Any Member exercising its right under the Company's Articles to remove a Director shall be responsible for and shall indemnify the other Members and the Company against any claim (save for unpaid salary and benefits due up to the date of their removal) by such Director for unfair or wrongful dismissal or any other claim whatsoever arising out of such removal from office as a Director and/or the termination of his or her employment.

10.5 The Board may in its absolute discretion create sub-committees and delegate such responsibilities as it sees fit provided always that the provisions of clause 13 shall always apply.

10.6 Subject to clause 10.7, the Board shall have a Chairman, who shall be appointed in accordance with article 21.9, article 21.10 and Schedule 1.

10.7 If a Chairman is unable to attend any meeting of the Board, the alternate appointed by the Board shall act in his place.

10.8 This clause 10 shall also apply to any Director who is also a director of any Subsidiary.

## 11 **Board and Meetings**

11.1 The Board shall be composed as set out in the Articles and shall comprise directors appointed in accordance with the provisions set out below in this clause 11.

### 11.2 **Appointment and Removal of Directors**

11.2.1 Any person who is willing to act as a Director, and is permitted by law to do so, may be appointed to be a Director.

11.2.2 Directors shall be designated as "A" Directors, "B" Directors or "C" Directors in accordance with article 21.1 of the Articles.

11.3 All Board meetings shall be held at a venue reasonably convenient for all the Directors (including, for the avoidance of doubt, by video-conference or other virtual means).

11.4 A Board meeting will be held at least four times in each calendar year, with no more than four months between each meeting.

11.5 The Company shall ensure that:

11.5.1 each Director is sent papers (which may be sent by electronic means if agreed) for Board meetings (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than five Business Days before the date of such meeting.

11.6.3 Any Member which requests the Company to do so:

- (a) is sent papers (which may be sent by electronic means if agreed) for all Board and all general meetings of the Company (including but not limited to an agenda and details of any specific resolutions to be put to the meeting) no less than five Business Days before the date of such meeting;
- (b) is sent all draft minutes within fourteen Business Days of the Board or general meeting; and
- (c) is permitted to send a representative (who may be a councillor) to speak on a matter of business at Board meetings subject to seeking the prior written permission of the Chair of the Board.

## 12 **Reserved Matters**

12.1 The Company will not, and the Members shall exercise their powers in relation to the Company to procure that (save as otherwise provided or contemplated in this Deed) the Company will not, undertake those matters set out in Schedule 1 without the consent of the requisite percentage of "A" Members set out in Schedule 1.

12.2 Clause 12.1 shall also apply to any Subsidiary of the Company.

12.3 Notwithstanding any other provision of this Deed or the Articles, no new member (irrespective of whether they are admitted as an "A" Member or a "B" Member) shall be admitted to the Company without such member entering into a Deed of Adherence whereby such new member agrees to be bound by the terms of this Deed.

## 12.4 **Unanimous Decision Making**

12.4.1 The Members agree that no changes will be made that would be detrimental to one or more of the Members even if of benefit to others and that the Members shall work collaboratively to seek the agreement of all of the Members and the Members further agree their respective Voting Representatives will informally meet with representatives of the Board or the Directors as necessary to consider and discuss strategic areas of Company Business at a Members' Representative Board.

12.4.2 Where a potential Reserved Matter decision or any item for discussion has the potential to be detrimental to one or more of the Members the matter shall first be considered by the informal meeting of the Voting Representatives at a Members' Representative Board.

12.4.3 If having considered the proposed resolution or the item for discussion the Voting Representatives or any of them are of the opinion that it is unlikely to be passed unanimously at a general meeting (or in writing) they may notify the person or body which has proposed the resolution or item of their concerns, and the reasons for them, and require them, within such time as is reasonable in the circumstances, to formulate an alternative proposal or proposals which address the concerns and submit them to a meeting of the Members' Representative Board to be held within such time as is reasonable in the circumstances following receipt of the alternative proposals (or such later meeting of the Members' Representative Board as shall be agreed) for further consideration.

12.4.4 The Members' Representative Board shall consider the alternative proposal or proposals submitted to them and notify the person or body proposing the Resolution of any further concerns, and the reasons for them, which they have.

12.4.5 The person or body requiring the resolution shall then finalise the wording of the resolution on the Reserved Matter or item for decision to be put to the vote at a general meeting of the company (or in writing) having due regard to the comments made by the Members' Representative Board.

## 13 **Deadlock**

### 13.1 **Meaning of Deadlock**

For the purposes of this clause 13 there shall be a Deadlock if:

13.1.1 a matter constituting a Reserved Matter has been considered by the Members; and

13.1.2 no resolution has been carried by the Members in relation to the matter because of a failure of any Member to consent to such resolution; and

13.1.3 the matter is not resolved within ten (10) Business Days from the date of the relevant general meeting or the end of the period for approval of a written resolution circulated to the Members for consent (as appropriate).

### 13.2 **Members' obligations**

In any case of Deadlock each of the Members shall (at the request of any Member) within fifteen (15) Business Days of Deadlock having arisen or become apparent, cause the Chairman of the Board, to prepare and circulate to the Members and the other Directors a memorandum or other form of statement setting out its position on the matter in respect of which the Deadlock has arisen and its reasons for adopting that position, but on the basis that such memorandum or statement shall always be prepared and delivered on a "without prejudice" basis. Each Member shall then refer the Deadlock to its Head of Paid Service and such persons shall use all reasonable efforts in the 20 Business Days following such reference to resolve the Deadlock.

### 13.3 **Failure to resolve Deadlock**

If a resolution of a Deadlock referred pursuant to clause 13.2 is not resolved or is not agreed in accordance with that clause (or such longer period as the Members may agree in writing) the status quo shall prevail unless the Directors resolve that to do so would be detrimental to the proper conduct of the Business in which instance the provisions of clauses 13.4 to 13.7 shall apply.

13.4 The Board shall serve written notice on the Members requiring them to attempt to settle the dispute by mediation (such notice to be served within seven Business Days of the Board meeting at which the decision was passed). On receipt of such notice from the Board the Members will attempt to settle the dispute by mediation in accordance with the model mediation procedures (the **Procedures**) published by the Centre for Effective Dispute Resolution, CEDR Solve (**CEDR**). To initiate mediation, a Member must give notice in writing (**Mediation Notice**) to the other Members.

- 13.5 The Members will seek to agree the appointment of a mediator but, failing agreement within 28 days of the service of the Mediation Notice, any Member may ask CEDR to appoint a mediator.
- 13.6 In the event that there are no Procedures available and CEDR is unable or unwilling to appoint a mediator, any Member may ask the President of the Law Society of England & Wales (or its successor body) to appoint a mediator and to recommend a mediation procedure which the Members shall adopt.
- 13.7 If the matter in dispute is not resolved within 40 Business Days of the service of the Mediation Notice then any Member may (but shall not be obliged to) within fifteen (15) Business Days after expiry of such period serve notice in writing upon the other Members and the Board that the Board shall, at the earliest practicable date:
- 13.7.1 make or concur in the making of a statutory declaration in the terms mentioned in section 89 of the Insolvency Act 1986 (if the state of the Company's affairs permits the making of such a declaration); and
- 13.7.2 convene an extraordinary general meeting of the Company to consider:
- (a) the matter from which the Deadlock arose; and
- (b) the passing of a special or extraordinary resolution to place the Company in members' voluntary winding-up (if such a declaration has been made in accordance with clause 13.7.1) or (in any other case) in creditors' voluntary winding-up;
- such meeting or meetings to be held within five weeks after either the making of any declaration made in pursuance of clause 13.7.1 or (where the state of the Company's affairs does not admit to the making of such a declaration as is mentioned in clause 13.7.1 convene a meeting of the Company's creditors in accordance with section 98 of the Insolvency Act 1986.

## 14 Intellectual property

- 14.1 The Members and the Company acknowledge that:
- 14.1.1 any and all Intellectual Property Rights created wholly by the Company in connection with the Business (the **Business IPRs**) shall automatically belong to the Company.
- 14.1.2 any and all Intellectual Property Rights created by the Members in connection with the Business (the **Member IPRs**) shall belong to the Member who created them.
- 14.2 The Company hereby grants to each Member for the time being and for the duration of their Membership of the Company a non-transferable royalty-free licence to use the Business IPRs (as they may be constituted from time to time) to the extent necessary for the purposes of the Business. The Members hereby grant to the Company a non-transferable royalty-free licence (without the right to grant sub-licences) to use the Member IPRs (as they may be constituted from time to time) solely to the extent necessary for the purposes of the Business.

- 14.3 All use of the Business IPRs by the Members pursuant to this Deed, including all goodwill arising from such use, shall accrue solely to the benefit of the Company. All use of Member IPRs by the Company pursuant to this Deed, including all goodwill arising from such use, shall accrue solely to the benefit of the respective Member.
- 14.4 The Company and each Member agree that they shall not, without the prior written consent of the other parties to this Deed, assign, transfer, mortgage, charge or deal in any other manner with any of their rights under this clause 14.
- 14.5 For the purposes of this clause 14, **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 15 **Withdrawal and Removal of Members**
- 15.1 An "A" Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than six months' notice in writing to the Company and the other Members.
- 15.2 A "B" Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than three months' notice in writing to the Company and the other Members.
- 15.3 In accordance with clause 6.1.6, at the end of each financial year, the "A" Members shall confirm to the Company the percentage of its total procurement for that "A" Member of dwellings to support the discharge of its statutory responsibilities for homeless households or those at risk of homelessness (excluding nightly paid properties or properties outside of the London area) that was undertaken via the Company that financial year. In the event that this percentage is less than 50% the "A" Members have the discretion to terminate the "A" Member's Membership in accordance with the procedure set out in article 12.14.
- 15.4 For the purposes of the calculation of the percentage referenced in clause 15.3 above, this will be calculated from the date of entry as an "A" Member to the end of that financial year for the initial year of membership, and subsequently shall be calculated every full financial year.
- 15.5 Subject to compliance with the provisions of articles 12.3 and 12.6 of the Articles, in the event that an "A" Member's Membership is terminated in accordance with clause 15.3, the "A" Member may be re-admitted to the Membership of the Company as a "B" Member.
- 15.6 Any Member may cease to be a party to this Deed and cease to be a member of the Company upon giving not less than twelve months' notice in writing to the Company and the other Members.



- 15.7 With the exception of any money reimbursed to a Member under clause 6.5, a Member shall not be entitled to any refund of any amount paid to the Company as a consequence of ceasing to be a party to this Deed or ceasing to be a member of the Company.
- 15.8 On the withdrawal of a Member, their Service Level Agreement will, unless otherwise agreed, be deemed to have been terminated on the date of withdrawal except as otherwise agreed by the withdrawing Member and the Company.
- 15.9 Notwithstanding that a Member shall cease to be a party to this Deed, it shall not be released from any liabilities or rights of action accrued against it under or in connection with this Deed up to the date of its ceasing to be a party and that Member shall continue to be bound by those provisions of this Deed which are expressed to continue following termination of this Deed. The Deed shall continue in force in relation to the remaining parties including any party having entered into a Deed of Adherence.
- 15.10 A Member (the Defaulting Member) shall cease to be a Member in the event that:
- 15.10.1 it commits a serious breach of this Deed; or
  - 15.10.2 it persistently breaches this Deed; and
- the breach (if capable of remedy) is not rectified within 20 Business Days of written notice having been given to the Defaulting Member requiring it to rectify such breach or breaches and the remaining Members agree by majority vote at a duly convened general meeting or in writing that the Defaulting Member's membership shall cease.

## 16 **Termination Of This Deed**

- 16.1 This Deed shall continue in full force and effect from the date hereof until:
- 16.1.1 all the Members or their successors in title agree in writing to its termination;
  - 16.1.2 there is only one Member of the Company; or
  - 16.1.3 the Company goes into liquidation whether voluntary or compulsory (other than for the purpose of an amalgamation or reconstruction approved by all the Members).
- 16.2 Without prejudice to any accrued rights and liabilities of any of the Members, the ongoing rights and liabilities of any Member pursuant to this Deed shall cease automatically upon the cessation of his or its membership of the Company.
- 16.3 Termination of this Deed pursuant to this clause 16 shall be without prejudice to any accrued rights and liabilities of any of the Members.

## 17 **Confidentiality**

Each of the parties hereto shall hold in confidence and shall not and shall procure (where applicable) that its employees, agents and contractors shall not without the written consent of the other parties (such consent not to be unreasonably withheld) or as required by any other provision of law divulge to any third party any Confidential Information or use any such information other than for the purposes anticipated by this Deed provided that the

provisions of this clause 17 shall not apply to information which may properly come into the public domain through no fault of the party so restricted.

**18 Freedom Of Information**

18.1 Clause 17 shall not apply where a party has obtained the written consent of the other parties (such consent not to be unreasonably withheld) to divulge or use any Confidential Information or where Confidential Information is required to be disclosed by any law or statutory or regulatory obligation including without limitation the FOIA and the Environmental Information Regulations 2004 (but only to the extent of such law or statutory or regulatory obligation).

18.2 Each party acknowledges that it and the other parties are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each party shall assist and cooperate with the others (at their own expense) to enable the other parties to comply with these Information disclosure obligations.

18.3 Where a party receives a Request for Information in relation to Information which it is holding on behalf of another party, it shall:

18.3.1 transfer the Request for Information to the other party as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information;

18.3.2 provide the other party with a copy of all Information in its possession or power in the form that the other party requires within five Business Days (or such other period as the other party may specify) of a request from the other party; and

18.3.3 provide all necessary assistance as reasonably requested by the other party to enable that party to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

18.4 Where a party receives a Request for Information which relates to Confidential Information, it shall inform the other parties of the Request for Information as soon as practicable after receipt and in any event within five Business Days of receiving a Request for Information.

18.5 If any party determines that Information (including Confidential Information) must be disclosed under the FOIA, it shall notify the other parties of that decision at least five Business Days before disclosure.

18.6 Each party shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other Information:

18.6.1 is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004;

18.6.2 is to be disclosed in response to a Request for Information.

18.7 Each party acknowledges that any other party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of

Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose Information:

18.7.1 without consulting with the other parties, or

18.7.2 following consultation with the other parties and having taken their views into account.

18.8 Notwithstanding the provisions of clause 17 each Nominated Director (whilst he holds that office) will be entitled to make full disclosure to the Member appointing him of any information relating to the Company which that Member may reasonably require.

## 19 **No Partnership or Agency**

Nothing in this Deed shall constitute a partnership between the parties hereto or constitute one the agent of another and none of the parties shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of a party hereto (save as aforesaid) unless such party is appointed partner or agent of that other party with the consent in writing of that party.

## 20 **Waiver**

The waiver by any party of any default by any other party in the performance of any obligation of such other party under this Deed shall not affect such party's rights in respect of any other default nor any subsequent default of the same or of a different kind nor shall any delay or omission of any party to exercise any right arising from any default, affect or prejudice that party's rights as to the same or any future default.

## 21 **Variation**

Any variation of any term of this Deed shall be in writing duly signed by the Members and the Company.

## 22 **Conflict with Articles**

Where the provisions of the Articles conflict with the provisions of this Deed, the Members agree that the provisions of this Deed shall prevail, to the intent that they shall if necessary in any case procure the amendment of the Articles to the extent required to enable the Company and its affairs to be administered as provided herein.

## 23 **Notices**

23.1 Any demand, notice or other communication given or made under or in connection with this Deed will be in writing.

23.2 Any such demand, notice or other communication will, if given or made in accordance with this clause 23, be deemed to have been duly given or made as follows:

23.2.1 if sent by prepaid first class post, on the second Business Day after the date of posting; or

23.2.2 if delivered by hand, upon delivery at the address provided for in this clause 23,

provided however that, if it is delivered by hand on a day which is not a Business Day or after 4.00 pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

23.3 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient's address stated in this Deed or his Deed of Adherence or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service.

23.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## 24 **Costs**

Each of the parties hereto will pay its own legal costs and expenses incurred in connection with the preparation of this Deed.

## 25 **Severability**

The illegality, invalidity or unenforceability of any clause or part of this Deed will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

## 26 **Exercise of powers**

26.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow infringement of that restriction.

26.2 Where a Member is required under this Deed to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to be satisfied by such Member exercising its voting and other rights as a member and ensuring that any Nominated Director appointed by it shall procure such matter or thing, subject to the Director acting in accordance with his fiduciary duty to the Company.

## 27 **Entire Agreement**

This Deed and the documents referred to in it, the Annexures to this Deed and the Articles constitute the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties, implied or otherwise, other than those contained or expressly referred to therein. This clause does not restrict liability of either party for fraudulent misrepresentations.

## 28 **Assignment**

The Members shall not assign nor transfer nor purport to assign nor transfer any of their rights or obligations hereunder (other than to a successor body).

29        **Contract (Rights of Third Parties) Act**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

30        **Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and each of the parties hereto submits to the exclusive jurisdiction of the English and Welsh Courts.

This document is executed as a deed and delivered and takes effect on the date stated at the beginning of this Deed.

## Schedule 1

### Reserved Matters

Matters that require seventy-five percent (75%) approval by the "A" Members at a duly convened general meeting or in writing:

1	Permitting the admission of any additional Members of the Company.
2	Adopting or amending the Annual Business Plan in respect of each Financial Year.
3	Forming any Subsidiary or acquiring membership or shares in any other company or participating in any partnership or joint venture (incorporated or not).
4	Amalgamating or merging with any other company or business undertaking.
5	Entering into any arrangement, contract or transaction with either a capital or revenue value over [£500,000] which is not included in the current approved Business Plan.
6	Agreeing the appointment and the appointment terms (including any remuneration terms) of all Directors of the Company Directors.
7	Agreeing any remuneration terms for Directors.
8	Appointing or removing the chair of the Company.
9	Making any petition or resolution to wind up the Company or any Subsidiary.
10	Making any amendment to the Articles or any Subsidiary articles of association, including (without limitation) any rights of the Members.
11	Giving any guarantee to secure the liabilities of any person.
12	Creating any Encumbrance over the whole or any part of the Company or assets of any Subsidiary company.
13	Giving or taking any loans, borrowing or credit (other than Normal Trade Credit in the ordinary course of business) save as specifically provided for in the Annual Business Plan.
14	Any acquisitions, assimilations or asset transfers by or to the Company other than those approved in the Annual Business Plan.
15	The approval of any redundancy of any employees or the approval of any redundancy policy under which the Board will be authorised to make employees of the Company redundant.

16	Establishing any pension scheme in respect of Company employees or the alteration of any pension scheme or arrangements operated by the Company.
17	Any decisions relating to the strategic objectives of the Company (to the extent that these are not in any case reflected by the Company's Annual Business Plan).
18	Creating or granting any encumbrance over the whole or any part of the Company or its business, undertaking or assets other than liens arising in the normal course of business.

**Schedule 2**

**Deed of Adherence**

**Application for Membership and Deed of Adherence**

**dated**

**Parties**

- (6) [ ] of (1) [ ] (**Member 1**);
- (7) [ ] of (1) [ ] (**Member 2**);
- (8) [ ] of (1) [ ] (**Member 3**);
- (9) [ ] of (1) [ ] (**Member 4**)

Together the **Continuing Members**

and

- (10) **[Capital Letters] Limited** (registered number [ ] whose registered office is at [ ] (**the Company**))
- (11) [*name of new member*] of [*address*] (**New Member**).

**Introduction**

- (A) The Continuing Members and the Company are party to an agreement dated ..... 2018 (**Members Agreement**) which regulates their membership of the Company and sets out their respective rights and obligations as Members.
- (B) The New Member wishes to become a Member in accordance with the Company's Articles and the Members Agreement.

**Agreed terms**

- 1 Words and expressions used in this Deed shall, unless the context expressly requires otherwise, have the meaning given to them in the Members Agreement. The **Effective Date** means the date of this Deed.
- 2 The New Member hereby applies to be a Member of the Company in accordance with the Articles and the Members Agreement.
- 3 The New Member confirms that he/she has been supplied with a copy of the Members Agreement and Articles.
- 4 The New Member confirms that he/she has been designated as an ["A" Member / a "B" Member] in accordance with the Members Agreement and the Articles.
- 5 The Company, the New Member and each of the Continuing Members undertake with each other that, from the Effective Date, the New Member shall be admitted to the



Company as a Member and shall assume all of the rights under the Members Agreement granted to the Members and shall observe, perform and be bound by the provisions of the Members Agreement and Articles as though the New Member was an original party to the Members Agreement.

6 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

7 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

This Deed of Adherence has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

**INSERT MEMBER EXECUTION CLAUSES**

**THE COMMON SEAL** of )  
[ ] )  
was hereunto affixed )  
in the presence of: )

Authorised Signatory

executed as a deed by the )  
**New Member** (acting )  
)  
)  
in the presence of: ) Signature

witness signature:

name:

address:

occupation:

executed as a deed by **[Capital Letters] Limited** )

acting by *[name of director]*, a director )

in the presence of: ) Director

witness signature:

name:

address:

occupation:

This Deed has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

**INSERT MEMBER EXECUTION CLAUSES**

**THE COMMON SEAL** of )

[ ] )

was hereunto affixed )

in the presence of: )

Authorised Signatory

executed as a deed by **[Capital Letters] Limited** )

acting by **[name of director]**, a director )

in the presence of: ) Director

witness signature:

name:

address:

occupation: